

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4921

May 10, 2018

**R E D A C T E D**  
**R E S O L U T I O N**

Resolution E-4921. San Diego Gas & Electric Company requests approval of an amendment to an existing power purchase agreement (PPA) with MM Prima Deshecha Energy, LLC. This amendment is approved without modification.

PROPOSED OUTCOME:

- This Resolution approves an amendment to a previously approved power purchase agreement between San Diego Gas & Electric Company and MM Prima Deshecha Energy, LLC. The amendment makes several modifications to the original PPA. The amendment is approved without modification.

SAFETY CONSIDERATIONS:

- The amendment to the power purchase agreement does not appear to result in any adverse safety impacts on the facilities or operations of SDG&E. The amendment requires the sellers of the generation to continue to comply with all applicable safety requirements relating to the project.

ESTIMATED COST:

- The requested amendment to the power purchase agreement does not affect the contract price, interconnection point, or delivery term.

By Advice Letter 3165-E, filed on December 15, 2017.

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## **SUMMARY**

**San Diego Gas & Electric Company's renewable energy power purchase agreement (PPA), as amended, with MM Prima Deshecha Energy, LLC complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification.**

San Diego Gas & Electric Company (SDG&E) filed Advice Letter (AL) 3165-E on December 15, 2017, requesting California Public Utilities Commission (Commission) review and approval of an amendment (Amendment) to an existing renewable energy power purchase agreement between SDG&E and MM Prima Deshecha Energy, LLC (Prima). The original, approved PPA was a 15-year contract for generation from one new landfill gas facility, MM Prima Deshecha (Project), in San Juan Capistrano, California. SDG&E asserts that certain changes to the PPA are necessary to clarify the ambiguity surrounding the ownership of resource adequacy (RA) capacity attribute payments for the facility.

Changes to the original PPA pursuant to the proposed amendment include:

1. Clarifying ownership of RA capacity attributes of the Project.
2. Various other contract term clarifications.

The Amendment to the PPA does not affect contract price, interconnection point, or delivery term. The Amendment settles an ongoing dispute between Prima Deshecha and SDG&E. In AL 3165-E, SDG&E asserts that the Amendment to the PPA will not adversely affect customers, as SDG&E will not be compensating Prima Deshecha for prior claims over RA, PPA costs remain the same, and SDG&E's risk in relation to executing this amendment is minimal. SDG&E's execution of the Amendment is consistent with SDG&E's 2017 RPS Procurement Plan, approved in Decision 17-12-007. This resolution approves the Amendment to the MM Prima Deshecha Energy, LLC PPA without modification.

Table 1 below provides a summary of the PPA between SDG&E and Prima Deshecha.

**Table 1: Summary of the MM Prima Deshecha Energy, LLC PPA**

Generating Facility	Technology Type	Delivery Term (Years)	Capacity (MW)	COD	Location
MM Prima Deshecha Energy, LLC	Landfill Gas	15	6.1	10/01/2007	San Juan Capistrano, CA

## **BACKGROUND**

### **Overview of the Renewables Portfolio Standard (RPS) Program**

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, SB 2 (1X), and SB 350.<sup>1</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.32.<sup>2</sup>

Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.<sup>3</sup> On October 7, 2015, SB 350<sup>4</sup> made further changes to Pub. Util. Code Sections 399.11, et seq. SB 350 requires that the amount of electricity generated and sold to retail customers from eligible renewable energy resources be increased to 50% by December 31, 2030.<sup>5</sup>

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<sup>1</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session); SB 350 (de León, Chapter 547, Statutes of 2015).

<sup>2</sup> All further statutory references are to the Public Utilities Code unless otherwise specified.

<sup>3</sup> D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020). Note it is 33% of a Load Serving Entity's annual retail sales for 2020 and each year thereafter.

<sup>4</sup> SB 350 (De León, Chapter 547, Statutes of 2015) effective on January 1, 2016.

<sup>5</sup> D.16-12-040 established additional procurement requirement quantities for the three compliance periods established by SB 350: 2021-2024, 2025-2027, 2028-2030.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/RPS/> and <http://www.cpuc.ca.gov/RPS/Decisions/Proceedings/>.

## **NOTICE**

San Diego Gas & Electric Company states that a copy of Advice Letter 3165-E was mailed and distributed to the R.15-02-020 service list in accordance with Section 4 of General Order 96-B.

## **PROTESTS**

SDG&E Advice Letter 3165-E was not protested.

## **DISCUSSION**

**San Diego Gas & Electric Company requests approval of an amendment to an existing, long-term renewable energy power purchase agreement (PPA) with MM Prima Deshecha Energy, LLC.**

The MM Prima Deshecha project is a 6.1 megawatt (MW) landfill gas facility located in San Juan Capistrano, California. On July 1, 2004, SDG&E held a solicitation for renewable energy bids, authorized by D.04-06-014. On November 15, 2005, SDG&E filed Advice Letter 1727-E requesting Commission approval of the MM Prima Deshecha project, which was approved by Resolution E-3965 on December 15, 2005. On December 15, 2017 SDG&E filed AL 3165-E requesting Commission approval of an amendment to the existing, long-term renewable PPA with MM Prima Deshecha. SDG&E asserts in AL 3165-E that the purpose of the proposed amendment is to resolve an ongoing dispute between SDG&E and Prima Deshecha regarding the ownership of Resource Adequacy (RA) capacity attributes associated with the facility.

SDG&E has claimed the capacity value from MM Prima Deshecha in its RA compliance filings with the CPUC since the facility reached commercial operation in 2007. In the original PPA, there is no clear definition of which party

(SDG&E or MM Prima Deshecha) is entitled to ownership of the RA capacity value from the facility. While SDG&E has claimed and assumed ownership of RA capacity in the past from this facility, it was not explicitly defined in the PPA and therefore required formal clarification in the form of an amendment to the PPA.

The amendment does not modify contract price, delivery term, or expected energy deliveries. However, it does modify several other non-technical aspects of the original PPA. When the PPA was executed, the definition of “Product” did not include RA capacity attributes or incorporate current CAISO requirements. This Amendment seeks to clarify RA ownership and scheduling coordinator responsibilities in order to solve the dispute over the ownership of RA capacity attributes associated with the facility.

**SDG&E requests that the Commission issue a resolution that:**

1. Approves the Amendment in its entirety; and
2. Allows SDG&E to recover its costs in rates.

**Energy Division evaluated the amended MM Prima Deshecha PPA based on the following criteria:**

- Consistency with SDG&E’s 2017 RPS Procurement Plan and RPS Portfolio Need;
- Consistency with SDG&E’s Least-Cost, Best-Fit Methodology (LCBF);
- Disadvantaged Communities Considerations;
- Cost Reasonableness and Net Market Value;
- Procurement Review Group Participation;
- Project Viability Assessment and Development Status;
- RPS Eligibility and CPUC Approval; and
- Safety Considerations.

**Consistency with SDG&E’s 2017 RPS Procurement Plan**

Pursuant to statute, SDG&E’s RPS Procurement Plan (Plan) includes an assessment of RPS supply and demand to determine the optimal mix of

renewable generation resources; description of existing RPS portfolio; description of potential RPS compliance delays; status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>6</sup> California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>7</sup> The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.<sup>8</sup>

In SDG&E's 2017 RPS Plan, SDG&E explained that it utilizes a Need Determination Methodology to make renewable procurement decisions, which compares SDG&E's risk-adjusted forecasted RPS position to its RPS program compliance requirements. SDG&E asserts that it is well positioned to meet the current 33% RPS by 2020 target, as well as its RPS compliance requirements for the third (2017-2020) compliance period. With regards to the fourth (2021-2024) compliance period through 2030, SDG&E anticipates that it will meet its RPS requirements through procurement that has already been contracted. Based on that assessment, SDG&E stated that it would not hold a 2017 RPS solicitation. It is worth noting that all or a portion of the forecasted excess procurement from a compliance period could potentially be applied towards future RPS requirements.

As a Commission-approved PPA, the MM Prima Deshecha landfill gas facility was assumed in D.17-12-007 as a facility that would contribute to RPS supply in SDG&E's portfolio until the end of its contract term. In AL-3165-E, SDG&E explains that the project will continue to operate and provide renewable energy credits (RECs) as expected under the original PPA until 2022.

The Amendment was negotiated through bilateral efforts for the purpose of settling a dispute over the definition of "Product" in the PPA as it relates to RA capacity claims. The Amendment will clarify the definition of "Product" to include capacity attributes of the facility to account of RA value.

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<sup>6</sup> Pub. Util. Code § 399.13(a)(5).

<sup>7</sup> Pub. Util. Code § 399.13(d).

<sup>8</sup> SDG&E's 2017 Draft RPS Procurement Plan was approved by D.17-12-007 on December 18, 2017.

Based on SDG&E's assessment of its RPS portfolio supplies and demand outlined in its 2017 RPS Plan,<sup>9</sup> it appears that the Amendment will not change the amount of RPS supply in any way. The Amendment does not decrease or increase the amount of RPS supply contracted, as SDG&E will continue to use the facility to meet its RPS requirements into the fourth (2021-2024) compliance period. According to SDG&E's 2017 RPS Plan, MM Prima Deshecha is forecasted to deliver 246,679 MWh of RPS-eligible electricity from 2017 through 2022.<sup>10</sup>

Therefore, the amended MM Prima Deshecha Energy, LLC PPA is consistent with SDG&E's RPS portfolio needs in its 2017 RPS Procurement Plan, as approved by D.17-12-007.

### **Consistency with SDG&E's Least-Cost, Best-Fit Methodology (LCBF)**

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.<sup>11</sup> The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations.

SDG&E and MM Prima Deshecha Energy, LLC negotiated the proposed amendment bilaterally; therefore, the amended MM Prima Deshecha PPA did not compete directly with other RPS projects. Given that the Amendment is primarily clarifying the definition and ownership of the RA capacity attributes, SDG&E did not compare the Amendment to recent solicitations or executed contracts. However, the amended PPA compared reasonably against the original MM Prima Deshecha PPA.

The amended MM Prima Deshecha PPA was evaluated consistent with the least-cost best-fit methodology.

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<sup>9</sup> See D.17-12-007 at pg. 40-41 for a summary of SDG&E's assessment of RPS portfolio supplies and demand.

<sup>10</sup> See SDG&E's 2017 RPS Procurement Plan (public version) at page 1192.

<sup>11</sup> See § 399.14(a)(2)(B).

## **Disadvantaged Communities Considerations**

The original PPA was executed in 2005 and the LCBF evaluation did not include whether or not the facility was located in a disadvantaged community, as defined by Senate Bill 535 (De León, 2012).<sup>12</sup> Utilizing California EPA data that identifies disadvantaged communities in California, it has been determined that the MM Prima Deshecha landfill gas facility is not located in a disadvantaged community.

## **Cost Reasonableness and Net Market Value**

The Commission's reasonableness review for RPS PPAs includes a comparison of the proposed PPA's price and net market value (the result of the LCBF calculation) relative to other RPS offers received in recent RPS solicitations and to contracts executed in the 12 months prior to the proposed PPA's execution date. Using this methodology, the Commission found the original MM Prima Deshecha PPAs' costs were reasonable in Resolution E-3965.

Based on the analysis provided by SDG&E in AL 3165-E, the Commission determines that the amended MM Prima Deshecha PPA's total net market value is similar to the original PPA. See Confidential Appendix A for a more detailed discussion of the contractual pricing terms.

The MM Prima Deshecha Energy, LLC PPA, as amended, compares reasonably to net market value of the original PPA.

Payments made by SDG&E under the MM Prima Deshecha Energy, LLC PPA, as amended, are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SDG&E's administration of the amended PPA.

## **Procurement Review Group Participation**

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<sup>12</sup> According to the CalEPA, disadvantaged communities are defined as the top 25% scoring areas from the CalEnviroScreen. See the CalEPA's report on Designation of Disadvantaged Communities for more information: <https://calepa.ca.gov/wp-content/uploads/sites/62/2017/04/SB-535-Designation-Final.pdf>.



The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.<sup>13</sup> SDG&E asserts that the proposed amendment to the MM Prima Deshecha PPA was discussed at two PRG meetings on May 22, 2017 and September 15, 2017. SDG&E consulted with the PRG and provided their rationale for executing the proposed Amendment.

Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the proposed amendment to the MM Prima Deshecha PPA.

### **Project Viability Assessment and Development Status**

The facility has been successfully operating for ten years and the proposed amendment does not change the project's development status. It is reasonable that the MM Prima Deshecha PPA will continue to be viable and will continue to operate under this contract until 2022.

### **RPS Eligibility and CPUC Approval**

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>14</sup>

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<sup>13</sup> SDG&E's PRG includes representatives from the Commission's Energy Division and the Office of Ratepayer Advocates, The Utility Reform Network, the California Utility Employees, and the Union of Concerned Scientists.

<sup>14</sup> See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

The original Prima PPA was previously approved as a RPS-eligible resource and its eligibility status has not changed with the approval of this Amendment.

### **Safety Considerations**

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

This resolution approves an amended contract. The amended MM Prima Deshecha PPA does not alter facility operations. As this agreement does not require a change in facility operations, there are no incremental safety implications associated with approval of this amended contract beyond the status quo. Based on the information before us, this amended contract does not appear to result in any adverse safety impacts on the facilities or operations of SDG&E. In addition, the facility has not had any Occupational Safety and Health Administration (OSHA) violations in the 11 years it has been operating under this contract.

### **Confidential Information**

The Commission, through the implementation of Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

## **COMMENTS**

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Public Utilities Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **FINDINGS**

1. The MM Prima Deshecha PPA, as amended, is consistent with SDG&E's 2017 RPS Procurement Plan, as approved by D.17-12-007.
2. The amended MM Prima Deshecha PPA was evaluated consistent with the least-cost best-fit methodology identified in SDG&E's 2017 RPS Procurement Plan.
3. The MM Prima Deshecha PPA, as amended, compares reasonably to the net market value of the original PPA.
4. Payments made by SDG&E under the MM Prima Deshecha PPA, as amended, are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SDG&E's administration of the amended PPA.
5. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the amendment to the MM Prima Deshecha PPA.
6. The MM Prima Deshecha project is fully operational and should continue to provide renewable energy according to the terms and conditions in the MM Prima Deshecha PPA, as amended.
7. Procurement pursuant to the amended MM Prima Deshecha PPA is procurement from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
8. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this amended PPA to

count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this amended PPA.

9. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of Advice Letter 3165-E, should remain confidential at this time.
10. AL 3165-E should be approved effective today without modification.

**THEREFORE IT IS ORDERED THAT:**

1. San Diego Gas & Electric Company's Advice Letter 3165-E requesting Commission review and approval of an amendment to an existing renewable power purchase agreement with MM Prima Deshecha Energy, LLC is approved without modification.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 10, 2018; the following Commissioners voting favorably thereon:

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ALICE STEBBINS  
Executive Director

## **Confidential Appendix A**

Evaluation Summary of the Amended MM Prima  
Deshecha PPA

[REDACTED]

